

U.S. Application No. 09/580,029

Docket No. 4450-0293P

August 31, 2004

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REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-21 remain pending. Of the pending claims, claims 1, 7, 13, and 17 are independent.

ALLOWABLE SUBJECT MATTER

Applicant appreciates that claims 7-21 are indicated to be allowable. Applicant further appreciates that claims 4-6 are indicated to define allowable subject matter.

§ 103 REJECTION - CHOW, OKUYAMA

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chow, et al. (USP 5,495,471, hereinafter "Chow") in view of Okuyama, et al. (USP 5,285,459, hereinafter "Okuyama"). Applicant respectfully traverses.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established. See *M.P.E.P.* 2142. One requirement to establish *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. See *M.P.E.P.* 2142; *M.P.E.P.* 706.02(j). Thus, if the cited references fail to teach or

suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, the combination of Chow and Okuyama cannot be relied upon to teach or suggest all elements of claims 1-3. For example, independent claim 1 recites, in part, "restoring the performance of the network in response to the performance metric." Contrary to the Examiner's assertion, Chow cannot be relied upon to teach or suggest at least this feature.

More specifically, Chow is directed toward a method and system for restoring disrupted communications network connections after network failures. In particular, Chow is directed toward recovery after a fiber link is cut. *See column 1, lines 8-15; column 6, lines 25-34.*

Chow discloses that upon protection of a cut in a fiber link, both of the nodes sandwiching in the fiber link cut send restoration messages to adjacent nodes and reestablish communication between the effected nodes, the so-called black and grey nodes, as the restoration messages are received from the intermediate nodes. *See column 6, line 35 - column 7, lines 35; Figures 3-5.*

In the Office Action, the Examiner specifically points to column 11, line 59 - column 12, line 68 to purportedly teach the feature as recited above. However, upon closer examination of the relied upon portion, it is noted that the relied upon portion merely discusses evaluation of the effectiveness of the restoration algorithm. Chow discusses five performance metrics to evaluate such algorithms. See column 11, lines 59-67. The five performance metrics identified in Chow are time to restoration, level of restoration, utilization of spare channel resources; range of application, and message volume.

As stated above, the performance metrics used in Chow is merely to evaluate the efficiency of the restoration algorithm. This is in no way the same as the performance metric as defined in the claims. In claim 1, the performance metric is based on a number of transmission code violations, which is used to determine whether the network response has to be restored. In other words, the performance metric in Chow is used after the restoration of the network performance has occurred to determine the efficiency while in the claims, the performance is used prior to determine whether or not the network's performance has to be restored. As such, the performance metric as discussed in

Chow is completely non-analogous to the performance metric as recited in the claims. Clearly, contrary to the Examiner's assertion, Chow cannot be relied upon to teach or suggest at least the above-recited feature of independent claim 1.

Okuyama has not been, and indeed cannot be, relied upon to correct at least this deficiency of Chow. Therefore, independent claim 1 is distinguishable over the combination of Chow and Okuyama.

Claims 2 and 3 depend from independent claim 1. Therefore, for at least the reasons stated above with respect to independent claim 1, claims 2 and 3 are also distinguishable over the combination of Chow and Okuyama.

Applicant respectfully request that the rejection of claims 1-3 based on Chow and Okuyama be withdrawn.

#### CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg.

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No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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